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REMARKS

In the above-identified Office Action, claims 8, 12, 17 and 38-58 were withdrawn from consideration, and the remainder of the pending claims were initially rejected on one or more grounds. Claims 38-58 have been cancelled without prejudice to refiling in this or a continuing application. Reconsideration of the claims is respectfully requested in light of the following.

In the Office Action, claim 1 was initially rejected as allegedly anticipated by the Dunn reference (US 4,731,084). To be anticipatory, a reference must show all elements of the claim arranged as stated in the claim. Respectfully, the Dunn reference does not show all features of claim 1 in the arrangement of claim 1. As one example, the claim recites an internal cord of relatively high tensile strength with an external sheath of fibers. The Dunn reference discloses an elastomer-and-radiopaque-material strand for a core 30 (see column 5, lines 5-10 and Figs. 3-4). Its external braided member 20 is the high-strength part, carrying 300 or more pounds (column 4, lines 40-41), while the core 30 simply provides radiopaque observability and maintains some shape of the external braided member 20 (column 5, lines 5-10). The subject matter of claim 1 has the element that provides strength on the inside, protected by a surrounding sheath that provides abrasion resistance. Dunn does not disclose that its core strand 30, which the Office Action considers the "cord" of claim 1, has a tensile strength sufficient to maintain a desired distance or orientation of bone portions. That lack, emphasized in the disclosure that the load-bearing part of Dunn is braided member 20, precludes anticipation of claim 1.

As another example, the external braided member 30 of Dunn does not provide an abrasion resistant coating to cord 30. As indicated in the present specification, the material of a coating or sheath can be selected for abrasion resistance, or other factors can be introduced so

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that the resistance to abrasion is increased. In the Dunn reference, however, abrasion resistance is not discussed. The material or configuration of external braided member 20 is not discussed in the context of abrasion resistance. Sheath 40 of the Dunn reference is disclosed to be "thick enough to withstand the abrasion to which it will be subjected." That disclosure does not speak to resistance to abrasion, but to providing sufficient thickness in the sheath 40 so that the abrasions will not eat through the sheath. The subject matter of claim 1 includes resistance to (e.g. avoidance of) abrasion, whereas the only disclosure in Dunn referring to abrasion is to provide a thicker wall so that the abrasions will not puncture the sheath.

Claim 1 was also initially rejected as allegedly obvious over the Poirier reference (US 2,737,075) in view of Dunn. Respectfully, the Poirier reference does not disclose a surgical tether for orthopedic treatment, but only discloses a "cord structure" of a core and multiple "casings" that "act in the same manner as the conventional Chinese finger-trap." Nothing in Poirier mentions or suggests surgical characteristics. The Poirier reference also does not disclose abrasion resistance of any of its pieces, and since it only discloses a way to make a cord there is no reason for it to do so. The focus of the Poirier reference is the interaction of the casings in "finger-trap" fashion, that is, by narrowing in diameter under slight elongation. Characteristics relevant to the present claims are simply not disclosed.

The Office Action further acknowledges that Poirier does not show a radiopaque element. While Dunn suggests making its core 30 of an elastomer with a radiopaque material mixed in, it is clear that mixing the core 30 as taught by Dunn into the cord structure Poirier teaches would interfere with the operation of the Poirier cord. Dunn's core 30 is shown as a single strand, and is not described or suggested in any other form. Poirier, on the other hand, identifies all of its

layers ("casings" and "core" alike) as formed of numerous strands twisted together (column 2, lines 14-19), and all of those layers work together in the "finger-trap" method of gripping each other. It thus teaches the virtue of multiple strands in each layer that are twisted into a "finger-trap," and teaches away from use of a single strand as in Dunn. Moreover, Poirier teaches making each of its layers of the same material. One of its goals is to provide equal resistance to tensional forces for each layer, and simultaneous breaking of each layer (see column 2, lines 30-46). As Poirier notes, the twisted-strand configuration of all of the layers helps, but clearly if one layer is made of a weaker material, those goals will be defeated. Thus, introducing a radiopaque material into the homogeneous Poirier cord structure would make it more difficult or impossible to realized the equal resistance/simultaneous breaking goals of Poirier.

Claims 2-7, 9-11, 13-16, and 18-35 depend from claim 1, and are likewise not anticipated by Dunn or obvious in view of Poirier and Dunn. Further, many or all of these claims distinguish over those references on their own merit. For example, claims 2 and 3 recite the ability of the cord to move with respect to other parts. Dunn does not disclose or suggest any movement of its core strand 30 with respect to any other part of its structure. Its statement that the core strand provides shape for the braided member 20 suggests to one of ordinary skill that the strand should not move so that a constant shape is maintained. Poirier discloses multiple layers that cannot move with respect to each other, because they act as a "finger-trap." Movement of core 12 or another layer results in tightening of the trap, eliminating relative movement. Similarly, claim 18 recites the ability of the second sheath to move with respect to other parts. In addition to the above points, Dunn discloses friction fitting its sheath 40 onto braided load-bearing member 20 (column 4, lines 50-51), and does not suggest that sheath 40 can move with respect to other parts.

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As another example, claim 14 recites that the radiopaque element includes filament(s) spirally wound around the cord or a sheath. Neither Dunn nor Poirier shows that structure. The only radiopaque element of Dunn is the center strand or core 30, and strand 30 provides shape for the load-bearing braided member 20 (column 5, lines 5-7). Consequently, Dunn does not disclose spiral winding, and it cannot be altered to do so without going against its own teachings. Poirier does not include a radiopaque element, and as noted above all of its layers are made of the same material and in the same configuration to create its desired "finger-trap" action. Claim 14 and other claims are therefore individually allowable over the cited references as well.

Dependent claim 27 was initially rejected as allegedly obvious over the Dunn reference as modified by the Hlavacek reference (US 4,792,336). As discussed above, the Dunn reference does not include all elements of claim 1, from which claim 27 depends. Moreover, the Dunn reference teaches away from using bioabsorbable materials. Dunn teaches a permanent replacement for a natural ligament. See e.g. Abstract; column 1, lines 6-8; column 2, lines 20-30, 33-39, 50; column 3, lines 44-46. A bioabsorbable material is, by definition, not "permanent." Accordingly, one of ordinary skill would not be motivated to modify the Dunn reference with the Hlavacek reference as suggested in the Office Action.

Independent claim 36 recites the cord and first sheath features as in claim 1, and neither Dunn nor the Poirier/Dunn combination shows or suggests all those features arranged as in the claim, as discussed above. Further, the Office Action did not discuss the "means for imparting radiolucency to the tether" of claim 36 at all. Without any discussion of the scope of that claim language or of what disclosure in the cited references meets it, no proper rejection of claim 36 can be made. As a side note, it appears that the use of the term "radiolucent" in the specification

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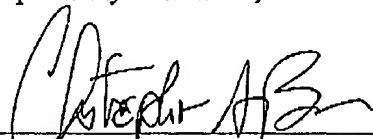
and claims was intended to mean "radiopaque," as page 15 of the specification indicates that a radiopaque element can be made of radiolucent materials. That error is being corrected.

Independent claim 37 recites the cord features as in claim 1, and neither Dunn nor the Poirier/Dunn combination shows or suggests the entirety of those features arranged as in the claim, as discussed above. Further, the Office Action did not discuss the "means for attaching" of claim 37 at all. Without any discussion of the scope of that claim language or of what disclosure in the cited references meets it, no proper rejection of claim 37 can be made.

The above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action but are simply provided to address the rejections made in the Office Action in the most expedient fashion. Applicant reserves the right to later contest positions taken in the Office Action that are not specifically addressed herein. Further, no limitation of the claims is intended by any of the remarks herein. The claims are intended to have the full scope to which their language entitles them, including equivalents.

In conclusion, reconsideration and withdrawal of the rejections of the claims based on the remarks presented is respectfully requested. The undersigned attorney invites Examiner Reimers to call to discuss any further issues that may remain.

Respectfully submitted,



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